

REMARKS

Applicants have reviewed and considered the Office Action dated October 29, 2007, and the cited references therein. In the Office Action, the Examiner rejected claims 1, 22, 23 and 36 under 35 U.S.C. § 102 and claim 40 under 35 U.S.C. § 103. In response thereto, claims 1 and 36 have been amended and claim 40 has been canceled. In view of the amendments and the following remarks, Applicants request reconsideration and allowance of the pending claims.

Rejection under 35 U.S.C. § 102(e)

Claims 1, 22 and 23 were rejected under 35 U.S.C. § 102(e) as being anticipated by US Pat. No. 6,470,709 ("Siekierski").

Independent Claim 1 is Not Anticipated by Siekierski

Claim 1, as amended, recites a fastener for stabilizing multiple bone fragments comprising, in part, "a first portion configured to extend through the multiple bone fragments, the first portion having a curved cylindrical body; and a second portion, the second portion having a curved cylindrical body . . . wherein the curved cylindrical body of the second portion is slidably disposed within and extending substantially throughout the curved cylindrical body of the first portion."

Siekierski does not anticipate the invention of claim 1 at least because it does not disclose, "wherein the curved cylindrical body of the second portion is slidably disposed within and extending substantially throughout the curved cylindrical body of the first portion," as recited by claim 1, as amended.

Siekierski discloses a threadless jewelry connector assembly. In some embodiments, the assembly of Siekierski comprises a partial ring assembly having a partial ring 164 and removable end piece 162. *Siekierski*, col. 9, ll. 3-10. The removable end piece 162 includes a stem 170 which may be inserted into an internal passage 174 of the partial ring 164. *Siekierski*, col. 9, ll. 15-25. As is seen with reference to Figure 15, the stem 170 extends into the passage 174 a short distance relative to the total length of the passageway 174. Thus, Siekierski does not disclose, "wherein the curved cylindrical body of the second portion is slidably disposed within and extending substantially throughout the curved cylindrical body of the first portion," as recited in claim 1.

For at least the reasons discussed above, the Applicants respectfully submit that Siekierski does not anticipate claim 1. Reconsideration and withdrawal of the rejection are thus respectfully requested.

Claims Depending from Independent Claim 1 are Patentable

Claims 22 and 23 depend from claim 1. Thus, these claims are also patentable for at least for the reasons presented above and, further, in view of their additional recitations. Reconsideration and withdrawal of the rejections are requested.

Rejection under 35 U.S.C. § 102(b)

Claims 1, 22, 23 and 36 were rejected under 35 U.S.C. § 102(b) as being anticipated by US Pat. No. 5,167,665 ("McKinney").

Independent Claims 1 and 36 Are Not Anticipated by McKinney

Each of claims 1 and 36, as amended, recite a first portion having a curved cylindrical body, a second portion having a curved cylindrical body, "wherein the curved cylindrical body of the second portion is slidably disposed within and extending substantially throughout the curved cylindrical body of the first portion."

McKinney discloses a rivet having a body and a mandrel. *McKinney*, col. 3, ll. 38-39. The body has an interior passage that receives the mandrel, such that the mandrel extends through the body. *McKinney*, col. 3, ll. 47-58. As is seen with reference to Figures 3-4, both of the body and the mandrel comprise substantially straight members. The Examiner asserts that the head 33 of the body 19 comprises a curved surface. The Applicants respectfully disagree with the Examiner's interpretation of the body 19. Claims 1 and 36 recite that the first portion have "a curved cylindrical body." McKinney uses identical language to describe the body 19 and says the body 19 has a shank 25 and a head 33. *McKinney*, Col. 3, ll. 40. The body 19 is not a curved cylindrical body. Such interpretation of McKinney improperly ignores the language and teachings of McKinney. McKinney has no disclosure that the body 19 could be curved nor that it would be desirable for the body 19 to be curved. The Applicants respectfully submit that McKinney thus not disclose a first portion having a curved cylindrical body, a second portion having a curved cylindrical body, "wherein the curved cylindrical body of the second

portion is slidingly disposed within and extending substantially throughout the curved cylindrical body of the first portion," as recited by claims 1 and 36.

Further, the rivet of McKinney is designed to attach objects to bone. *McKinney*, Abstract. The rivet is not configured to "extend through multiple bone fragments," as recited by claim 1. Nor is it apparent from the teachings of McKinney *could* extend through multiple bone fragments. Given no explicit disclosure, the Applicants infer that the Examiner is asserting that McKinney inherently discloses that the rivet could extend through multiple bone fragments. MPEP 2112 discusses that for a rejection based on inherency to be proper, the prior art must always have the inherent element. The mere possibility that the element could occur is not enough:

The fact that a certain result or characteristic may occur or be present in the prior art is not sufficient to establish the inherency of that result or characteristic. ... "To establish inherency, the extrinsic evidence 'must make clear that the missing descriptive matter is necessarily present in the thing described in the reference, and that it would be so recognized by persons of ordinary skill. Inherency, however, may not be established by probabilities or possibilities. The mere fact that a certain thing may result from a given set of circumstances is not sufficient.' "

MPEP 2112 IV, Citations Omitted. The Applicants respectfully submit that, even if the device of McKinney could possibly extend through multiple bone fragments, it would not in all instances and such configuration would not necessarily be present.

For at least these reasons, the Applicants respectfully submit that McKinney does not anticipate claims 1 and 36. Reconsideration and withdrawal of the rejections are thus respectfully requested.

Claims Depending from Independent Claim 1 are Patentable

Claims 22 and 23 depend from claim 1. Thus, these claims are also patentable for at least for the reasons presented above and, further, in view of their additional recitations. Reconsideration and withdrawal of the rejections are requested.

Conclusion

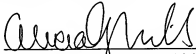
This application now stands in allowable form and reconsideration and allowance is respectfully requested.

This response is being submitted on or before February 29, 2008, with the required fee for a one-month extension of time, making this a timely response. It is believed that no additional fees are due in connection with this filing. However, the Commissioner is authorized to charge any additional fees, including extension fees or other relief which may be required, or credit any overpayment and notify us of same, to Deposit Account No. 04-1420.

Respectfully submitted,

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